

HOME > PUBLIC REPORTS

Director's Report Details

SIU Director's Report - Case # 22-PFP-053

 Warning:

This page contains graphic content that can shock, offend and upset.

Contents:

- [Mandate of the SIU](#)
- [Information Restrictions](#)
- [Mandate Engaged](#)
- [The Investigation](#)
- [Evidence](#)
- [Incident Narrative](#)
- [Relevant Legislation](#)
- [Analysis and Director's Decision](#)

News Releases for this Case:

- [SIU Investigating Reported Serious Injury of Woman in Interaction with Police Horse, Less-Lethal Firearm Discharges at Ottawa Demonstrations](#)
- [SIU Concludes Investigation into Vancouver Police Officers at Ottawa Protests](#)

French:

- [Director's Report for Case # 22-PFP-053.](#)

Mandate of the SIU

The Special Investigations Unit is a civilian law enforcement agency that investigates incidents involving an official where there has been death, serious injury, the discharge of a firearm at a person or an allegation of sexual assault. Under the *Special Investigations Unit Act, 2019* (SIU (Special Investigations Unit) Act), officials are defined as police officers, special constables of the Niagara Parks Commission and peace officers under the Legislative Assembly Act. The SIU (Special Investigations Unit)'s jurisdiction covers more than 50 municipal, regional and provincial police services across Ontario.

Under the *SIU (Special Investigations Unit) Act*, the Director of the SIU (Special Investigations Unit) must determine based on the evidence gathered in an investigation whether there are reasonable grounds to believe that a criminal offence was committed. If such grounds exist, the Director has the authority to lay a criminal charge against the official. Alternatively, in cases where no reasonable grounds exist, the Director cannot lay charges. Where no charges are laid, a report of the investigation is prepared and released publicly, except in the case of reports dealing with allegations of



Special Investigations Unit Act, 2019

Pursuant to section 34, certain information may not be included in this report. This information may include, but is not limited to, the following:

- The name of, and any information identifying, a subject official, witness official, civilian witness or affected person.
- Information that may result in the identity of a person who reported that they were sexually assaulted being revealed in connection with the sexual assault.
- Information that, in the opinion of the SIU (Special Investigations Unit) Director, could lead to a risk of serious harm to a person.
- Information that discloses investigative techniques or procedures.
- Information, the release of which is prohibited or restricted by law.
- Information in which a person's privacy interest in not having the information published clearly outweighs the public interest in having the information published.

Freedom of Information and Protection of Privacy Act

Pursuant to section 14 (*i.e., law enforcement*), certain information may not be included in this report. This information may include, but is not limited to, the following:

- Confidential investigative techniques and procedures used by law enforcement agencies; and
- Information that could reasonably be expected to interfere with a law enforcement matter or an investigation undertaken with a view to a law enforcement proceeding.

Pursuant to section 21 (*i.e., personal privacy*), protected personal information is not included in this report. This information may include, but is not limited to, the following:

- The names of persons, including civilian witnesses, and subject and witness officials;
- Location information;
- Witness statements and evidence gathered in the course of the investigation provided to the SIU (Special Investigations Unit) in confidence; and
- Other identifiers which are likely to reveal personal information about individuals involved in the investigation.

Personal Health Information Protection Act, 2004

Pursuant to this legislation, any information related to the personal health of identifiable individuals is not included.

Other proceedings, processes, and investigations

Information may also have been excluded from this report because its release could undermine the integrity of other proceedings involving the same incident, such as criminal proceedings, coroner's inquests, other public proceedings and/or other law enforcement investigations.

Mandate Engaged

Pursuant to section 15 of the SIU (Special Investigations Unit) Act, the SIU (Special Investigations Unit) may investigate the conduct of officials, be they police officers, special constables of the Niagara Parks Commission or peace officers under the *Legislative Assembly Act*, that may have resulted in death, serious injury, sexual assault or the discharge of a firearm at a person.

A person sustains a "serious injury" for purposes of the SIU (Special Investigations Unit)'s jurisdiction if they: sustain an injury as a result of which they are admitted to hospital; suffer a fracture to the skull, or to a limb, rib or vertebra; suffer burns to a significant proportion of their body; lose any portion of their body; or, as a result of an injury, experience a loss of vision or hearing.

In addition, a "serious injury" means any other injury sustained by a person that is likely to interfere with the person's health or comfort and is not transient or trifling in nature.

This report relates to the SIU's investigation into the discharge of a firearm by the police at a 36-year-old man ("Complainant #1") and a 41-year-old man ("Complainant #2").

The Investigation



tired four baton rounds and one Oleoresin Capsicum (OC (Oleoresin Capsicum (Pepper Spray))) round from a 40-millimetre Penn Arms launcher (L140-4). At the time of notification, no injured persons had been identified or had come forward.

OPS (Ottawa Police Service) advised that City of Ottawa employees were clearing snow in the area. The SIU (Special Investigations Unit) asked that all snow-clearing be suspended until the SIU (Special Investigations Unit) examined the scene.

The VPD was to provide access to the ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)), and the L140-4.

The Team

Date and time team dispatched:	02/20/2022 at 2:15 a.m.
Date and time SIU (Special Investigations Unit) arrived on scene:	02/20/2022 at 3:45 a.m.
Number of SIU (Special Investigations Unit) Investigators assigned:	3
Number of SIU (Special Investigations Unit) Forensic Investigators assigned:	2

Affected Person (aka “Complainant”):

Complainant #1	36-year-old male; interviewed
Complainant #2	41-year-old male; interviewed

The Complainants were interviewed between February 23 and 24, 2022.

[Note : An affected person (complainant) is an individual who was involved in some form of interaction with an official or officials, during the course of which the individual sustained serious injury, died, was reported to have been sexually assaulted, or was shot at by a firearm discharged by an official.]

Civilian Witness (CW (Civilian Witness))

CW (Civilian Witness)	Interviewed
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The civilian witness was interviewed on March 4, 2022.

Subject Officials (SO (Subject Officer))

SO (Subject Officer) #1	Declined interview and to provide notes, as is the subject official’s legal right
SO (Subject Officer) #2	Declined interview and to provide notes, as is the subject official’s legal right; written statement received and reviewed.

[Note : A subject official is an official (whether a police officer, a special constable of the Niagara Parks Commission or a peace officer with the Legislative Protective Service) whose conduct appears, in the opinion of the SIU (Special Investigations Unit) Director, to have been a cause of the incident under investigation.

Subject officials are invited, but cannot be legally compelled, to present themselves for an interview with the SIU (Special Investigations Unit) and they do not have to submit their notes to the SIU (Special Investigations Unit) pursuant to the SIU Act.]



WO (Witness Officer) #3 Interviewed

The witness officials were interviewed between March 9 and 29, 2022.

*[**Note** : A witness official is an official (whether a police officer, a special constable of the Niagara Parks Commission or a peace officer with the Legislative Protective Service) who, in the opinion of the SIU (Special Investigations Unit) Director, is involved in the incident under investigation but is not a subject official in relation to the incident.*

Upon request by the SIU (Special Investigations Unit), witness officials are under a legal obligation pursuant to the SIU Act to submit to interviews with SIU (Special Investigations Unit) investigators and answer all reasonable questions. The SIU (Special Investigations Unit) is also entitled to a copy of their notes.]

Evidence

The Scene

On February 20, 2022, at 3:45 a.m., two SIU (Special Investigations Unit) forensic investigators attended the intersection of Bank Street and Sparks Street.

The scene consisted of a downtown intersection with Bank Street oriented north-south for vehicular traffic and Sparks Street orientated east-west for pedestrian only traffic. The width of Bank Street was approximately 8.5 metres; the distance between the buildings on Bank Street was approximately 23 metres. Bank Street was blocked to all traffic by a double row of high metal fencing approximately halfway between Sparks Street and Queen Street.

There was a four-storey building at the southeast corner of the intersection, a building at the southwest corner, a five-storey building at the northeast corner (Parliamentary Services), and an elevated open-air pavilion at the northwest corner (Bank of Canada).

The road surfaces were snow-covered and the snow was compacted. The area was well lit with streetlights and building lights, and the weather was cold and clear with a temperature of minus 16 degrees Celsius.

The ground area was searched for any evidence of a firearms discharge. Two ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) casings were located. One on the roadway on the west side of Bank Street south of Sparks Street, and one next to a building on the east side of Bank Street just south Sparks Street. The casings were collected, and the area was photographed and video recorded.

On February 21, 2022, at 10:30 a.m., a SIU (Special Investigations Unit) forensic investigator met with WO (Witness Officer) #1 to photograph the weapons. WO (Witness Officer) #1 allowed access to the weapons discharged at the scene. The first weapon was an ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) rifle, which belonged to SO (Subject Officer) #2. The second weapon was a L140-4, which belonged to SO (Subject Officer) #1.



Figure 1 - ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) casing on Bank Street



Figure 2 - ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) casing next to a building on Bank Street



Figure 3 - SO (Subject Officer) #2's ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) rifle



Figure 4 – SO (Subject Officer) #1's 40mm Launcher L140-4

Physical Evidence

Two ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) casings were located.

Video/Audio/Photographic Evidence [1]

OPS (Ottawa Police Service) Drone Video Footage

On March 3, 2022, the SIU (Special Investigations Unit) received recorded drone video footage from the OPS (Ottawa Police Service) in relation to the 'Freedom Convoy Protest'. The video depicted the events involving a less than lethal firearms discharge in the area of Bank Street and Sparks Street on the evening of February 19, 2022.

The video depicted a police line that stretched from an east side store front [Howards Fine Jewelers] to a west side store front [Brasseurs Restaurant] on Bank Street along the south side of Sparks Street. A large crowd of protestors were located directly in front of the police line on Bank Street, south of Sparks Street. The police line began to move forward, moving the protestors south on Bank Street. The protestors were observed to push the police officers back, attempting to stand their ground.

An unidentified protestor climbed up onto a concrete barrier and held an extremely bright light, which he shone on the front of the police line. The sound of the discharge of a less than lethal firearm was heard; however, it was not captured on video. The protestor who held the light appeared to get down from the barrier. Approximately five seconds later the protestor returned to the top of the barrier and continued to shine the light at the police officers. The discharge of a less than lethal firearm was heard a second time, also not captured on the video. The protestor with the light appeared to be struck with a projectile in the left shoulder area. The protestor got down from the barrier, disappeared into the crowd and did not return.

A radio transmission could be heard from a VPD police officer [now known to be WO (Witness Officer) #1]. WO (Witness Officer) #1 advised that they had deployed five ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) rounds at protestors. Command Centre advised that attempts should be made to identify and arrest the protestors involved. WO (Witness Officer) #1 further advised Command Centre that the protestors were pushing back and attacking the police officers and, as a result, the ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) rounds were deployed. The subject of the deployments had disappeared into the crowd.

City of Ottawa Street Surveillance Video Footage

On March 7, 2022, the SIU (Special Investigations Unit) received video footage from the intersection of Bank Street and Wellington Street, and Queen and Bank Streets. The footage depicted a large crowd of people. Due to the distance, it was difficult to distinguish protestors from police officers. Nor did the footage capture the deployment of a less lethal firearm.

Parliamentary Services Video Footage (northeast corner of Bank and Sparks Street)



At 7:18 p.m., the police line began to advance south on Bank Street moving the crowd of protestors back. The protestors resisted. At 7:21 p.m., an extremely bright light was observed in the crowd, which panned the police line. The protestor with the light was obscured by street posts and banners. Due to the distance, the deployment of a less than lethal firearm was not captured on video.

Bank of Canada Video Footage (Bank Street and Sparks Street)

The headquarters for the Bank of Canada was located at the northwest corner of Bank Street and Sparks Street, Ottawa. The video footage captured the east side of Bank Street further south into the crowd. A high-powered flashlight could be seen at 2:10 minutes into the video. The video did not capture the deployment of any less lethal weapons.

Materials Obtained from Police Service

Upon request, the SIU (Special Investigations Unit) received the following materials from VPD between March 3 and 7, 2022:

- City of Ottawa street video;
- OPS (Ottawa Police Service) drone video;
- VPD General Occurrence Report (includes statement from SO (Subject Officer) #2);
- VPD Notes-WO (Witness Officer) #2;
- VPD Notes-WO (Witness Officer) #3;
- VPD Policy-Major Incidents;
- VPD Policy-Public Demonstrations; and
- VPD Policy-Use of Force.

Materials Obtained from Other Sources

The SIU (Special Investigations Unit) obtained and reviewed the following records from other sources:

- Video footage from Parliamentary Services Building - northeast corner of intersection;
- Bank of Canada video footage (Bank Street and Sparks Street); and
- Video footage from the CW (Civilian Witness).

Incident Narrative

The following scenario emerges from the evidence collected by the SIU (Special Investigations Unit), which included statements from two civilians struck by a less lethal round, video footage from a variety of sources that captured the incident in parts, and a written statement from SO (Subject Officer) #2. As was their legal right, neither subject official chose to interview with the SIU (Special Investigations Unit).

In the evening of February 19, 2022, SO (Subject Officer) #2 and SO (Subject Officer) #1, members of the VPD-Emergency Response Team, were participants in a police operation involving a crowd of protesters that had gathered on Bank Street, south of Sparks Street. Specifically, they were there to support Public Safety Units officers, including from the VPD, who had formed in the intersection to push back the protesters south on Bank Street. The objective was to direct the crowd back a distance so that a safety fence could be erected on the roadway.

The front line of the protesters, which numbered on some estimates in the thousands, were face-to-face with the front line of police officers. The atmosphere was tense as the parties physically engaged and pushed back against each other. A number of arrests were made.

Complainant #1 and Complainant #2 were among the crowd of people at the protest. They had climbed atop a concrete barrier beside the McDonald's restaurant on the east side of Bank Street. Beside them was another male, whose identity remains unknown, with a flashlight in hand. The male shone the flashlight into the eyes of the police officers.

SO (Subject Officer) #1 was armed with a less lethal firearm – an L140-4. He observed the male shining the flashlight and discharged his weapon in his direction on multiple occasions. One of the rounds struck the face of the male. He was knocked off the concrete barrier and disappeared into the crowd. Another of SO (Subject Officer) #1's discharges struck Complainant #2 and Complainant #1, following which they climbed down the barrier and left the area.

SO (Subject Officer) #2 was armed with an ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)).



Section 25(1), *Criminal Code* – Protection of persons acting under authority

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Analysis and Director's Decision

On February 20, 2022, the OPS (Ottawa Police Service) contacted the SIU (Special Investigations Unit) to report that police officers with the VPD, in Ottawa to assist in the policing of the 'Freedom Truck Protest', had the day before discharged their less-lethal firearms at protesters. The SIU (Special Investigations Unit) initiated an investigation naming the officers – SO (Subject Officer) #2 and SO (Subject Officer) #1 – as subject officials. The investigation is now concluded. On my assessment of the evidence, there are no reasonable grounds to believe that either officer committed a criminal offence in connection with the use of their weapons.

Pursuant to section 25(1) of the *Criminal Code*, police officers are immune from criminal liability for force used in the course of their duties provided such force was reasonably necessary in the execution of an act that they were authorized or required to do by law.

SO (Subject Officer) #2 and SO (Subject Officer) #1 were part of a lawful police operation to control the crowd that had gathered on Bank Street. The plan was not to shut down the gathering, but simply to direct the protesters a short distance south so that safety fencing could be erected across the road. Those in the crowd had repeatedly been directed to move south before the officers began their push forward. On this record, I am satisfied that the involved officers were engaged, at minimum, in a reasonable and legitimate exercise of police powers at common law to maintain public order and safety.

I am also satisfied that the force used by the officers – the deployment of their less lethal firearms – was legally justified. SO (Subject Officer) #1's round were aimed at a man who was intentionally aiming a flashlight in the faces of the officers, presumably to interfere with their vision. Given the man's distance from the front lines of the police, it would have been impractical and perhaps even dangerous to wade into the crowd to deal with the man directly. The use of the ARWEN (Anti Riot Weapon Enfield (shoots rubber bullets or bean bags, a less lethal use of force option)) would appear to have been a reasonable tactic in the circumstances. Indeed, following the last of the officer's discharges, the man was knocked off the concrete barrier and apparently was no longer a factor in the events that followed. [2]

As for the shots fired by SO (Subject Officer) #2, these too were commensurate with the exigencies of the moment. They were directed at the legs of two protesters who seemed on the verge of physically engaging with the officers, including officers who were on the ground at the time. In both instances, the force succeeded in deterring the protesters, presumably without the infliction of serious injury.

For the foregoing reasons, there are no reasonable grounds to believe that either subject official comported themselves unlawfully in the use of their less lethal firearms. Accordingly, there is no basis for proceeding with criminal charges in this case. The file is closed.

Date: June 20, 2022

Electronically approved by

Joseph Martino



- 1) The following records contain sensitive personal information and are not being released pursuant to section 34(2) of the *Special Investigations Unit Act, 2019*. The material portions of the records are summarized below. [\[Back to text\]](#)
- 2) It is regrettable that Complainant #1 and Complainant #2 were struck by SO #1. However, given their distance from the officer, their proximity to the unidentified male with the flashlight, and the fact that the force at issue was less lethal force, I was satisfied that the circumstances did not give rise to any realistic theory of liability grounded in criminal negligence. [\[Back to text\]](#)



Note:

The signed English original report is authoritative, and any discrepancy between that report and the French and English online versions should be resolved in favour of the original English report.

PUBLIC REPORTS

- [Public Reports](#)
- [Director's Reports](#)
- [SIU Annual Report 2021-2022](#)
- [SIU Director's Expense Report](#)
- [Brochures](#)
- [2022/23 – 2024/25 Special Investigations Unit Business Plan](#)
- [SIU-MAG Memorandum of Understanding](#)

THE UNIT

- [The Unit](#)
- [What We Can Investigate](#)
- [Investigative Process](#)
- [Our Staff](#)
- [Legislation](#)
- [Shaping Civilian Oversight](#)

PROGRAMS AND SERVICES

- [Programs and Services](#)
- [Affected Persons Program](#)
- [Outreach Program](#)
- [Director's Resource Committee](#)
- [First Nations, Inuit and Métis Liaison Program](#)
- [Race-Based Data Collection](#)
- [Accessibility](#)

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MEDIA CENTRE

- > [Media Centre](#)
- > [News Releases](#)
- > [Status of SIU Cases](#)
- > [Breakdown of Occurrences](#)
- > [SIU on Twitter](#)
- > [Name Release Policy](#)
- > [Email Alerts - News Releases](#)
- > [Media Contact](#)
- > [Access to Information](#)
- > [FAQs](#)



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